

**CONFERENCE COMMITTEE REPORT  
DIGEST FOR ESB 45**

**Citations Affected:** IC 35-34-1-5; IC 35-38-1-1.3; IC 35-42-2-6; IC 35-50-2-1.3.

**Synopsis:** Criminal procedure. Conference committee report for ESB 45. Requires a court to issue a sentencing statement after the court has pronounced a sentence for a felony conviction. Provides that a court is not required to use an advisory sentence in imposing consecutive sentences for felony convictions that are not crimes of violence arising out of an episode of criminal conduct. Provides that an indictment or information may be amended at any time before the commencement of trial when the amendment does not prejudice the substantial rights of the defendant. Makes it battery by body waste, a Class D felony, for a person to knowingly or intentionally in a rude, insolent, or angry manner place blood or another body fluid or waste on a probation officer, firefighter, or first responder (in addition to other law enforcement officers or corrections officers) while the victim is engaged in the performance of official duties. Enhances the penalties for committing battery by body waste if the body waste is infected with hepatitis C. (Current law enhances the penalty if the body waste is infected with hepatitis B, HIV, or tuberculosis.) (The introduced version of this bill was prepared by the sentencing policy study committee.) **(This conference committee report removes provisions relating to sex offenders and sexually violent predators.)**

**Effective:** Upon passage; July 1, 2007.

## CONFERENCE COMMITTEE REPORT

**MADAM PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 45 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 35-34-1-5 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) An
- 4 indictment or information which charges the commission of an offense
- 5 may not be dismissed but may be amended on motion by the
- 6 prosecuting attorney at any time because of any immaterial defect,
- 7 including:
- 8 (1) any miswriting, misspelling, or grammatical error;
- 9 (2) any misjoinder of parties defendant or offenses charged;
- 10 (3) the presence of any unnecessary repugnant allegation;
- 11 (4) the failure to negate any exception, excuse, or provision
- 12 contained in the statute defining the offense;
- 13 (5) the use of alternative or disjunctive allegations as to the acts,
- 14 means, intents, or results charged;
- 15 (6) any mistake in the name of the court or county in the title of
- 16 the action, or the statutory provision alleged to have been
- 17 violated;
- 18 (7) the failure to state the time or place at which the offense was
- 19 committed where the time or place is not of the essence of the
- 20 offense;
- 21 (8) the failure to state an amount of value or price of any matter
- 22 where that value or price is not of the essence of the offense; or

(9) any other defect which does not prejudice the substantial rights of the defendant.

(b) The indictment or information may be amended in matters of substance ~~or form~~; and the names of material witnesses may be added, by the prosecuting attorney, upon giving written notice to the defendant at any time:

(1) up to:

~~(1)~~ (A) thirty (30) days if the defendant is charged with a felony; or

~~(2)~~ (B) fifteen (15) days if the defendant is charged only with one (1) or more misdemeanors;

before the omnibus date; **or**

**(2) before the commencement of trial;**

**if the amendment does not prejudice the substantial rights of the defendant.** When the information or indictment is amended, it shall be signed by the prosecuting attorney **or a deputy prosecuting attorney.**

(c) Upon motion of the prosecuting attorney, the court may, at any time before, during, or after the trial, permit an amendment to the indictment or information in respect to any defect, imperfection, or omission in form which does not prejudice the substantial rights of the defendant.

(d) Before amendment of any indictment or information other than amendment as provided in subsection (b) of this section, the court shall give all parties adequate notice of the intended amendment and an opportunity to be heard. Upon permitting such amendment, the court shall, upon motion by the defendant, order any continuance of the proceedings which may be necessary to accord the defendant adequate opportunity to prepare his defense.

(e) An amendment of an indictment or information to include a habitual offender charge under IC 35-50-2-8, **IC 35-50-2-8.5, or IC 35-50-2-10** must be made not later than ten (10) days after the omnibus date. However, upon a showing of good cause, the court may permit the filing of a habitual offender charge at any time before the commencement of the trial.

SECTION 2. IC 35-38-1-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 1.3. After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes.**

SECTION 3. IC 35-42-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 6. (a) As used in this section, "corrections officer" includes a person employed by:

(1) the department of correction;

(2) a law enforcement agency;

**(3) a probation department;**

~~(3)~~ (4) a county jail; or

~~(4)~~ (5) a circuit, superior, county, probate, city, or town court.

**(b) As used in this section, "firefighter" means a person who is**

**a:**

**(1) full-time, salaried firefighter;**

**(2) part-time, paid firefighter; or**

(3) volunteer firefighter (as defined in IC 36-8-12-2).

(c) As used in this section, "first responder" means a person who:

(1) is certified under IC 16-31 and who meets the Indiana emergency medical services commission's standards for first responder certification; and

(2) responds to an incident requiring emergency medical services.

~~(b)~~ (d) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

~~(c)~~ (e) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer, **firefighter, first responder**, or a corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer, **firefighter, first responder**, or corrections officer commits battery by body waste, a Class D felony. However, the offense is:

(1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:

(A) hepatitis B **or hepatitis C**;

(B) HIV; or

(C) tuberculosis;

(2) a Class B felony if:

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with hepatitis B **or hepatitis C** and the offense results in the transmission of hepatitis B **or hepatitis C** to the other person; or

(B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class A felony if:

(A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV; and

(B) the offense results in the transmission of HIV to the other person.

~~(d)~~ (f) A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:

(A) hepatitis B **or hepatitis C**;

(B) HIV; or

(C) tuberculosis;

(2) a Class C felony if:

(A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with hepatitis

1           **B or hepatitis C** and the offense results in the transmission of  
 2           hepatitis B **or hepatitis C** to the other person; or

3           (B) the person knew or recklessly failed to know that the  
 4           blood, semen, urine, or fecal waste was infected with  
 5           tuberculosis and the offense results in the transmission of  
 6           tuberculosis to the other person; and

7           (3) a Class B felony if:

8           (A) the person knew or recklessly failed to know that the  
 9           blood, semen, urine, or fecal waste was infected with HIV; and

10          (B) the offense results in the transmission of HIV to the other  
 11          person.

12          SECTION 4. IC 35-50-2-1.3, AS ADDED BY P.L.71-2005,  
 13          SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 14          JULY 1, 2007]: Sec. 1.3. (a) For purposes of sections 3 through 7 of  
 15          this chapter, "advisory sentence" means a guideline sentence that the  
 16          court may voluntarily consider as the midpoint between the maximum  
 17          sentence and the minimum sentence.

18          (b) Except as provided in subsection (c), a court is not required to  
 19          use an advisory sentence.

20          (c) In imposing:

21           (1) consecutive sentences **for felony convictions that are not**  
 22           **crimes of violence (as defined in IC 35-50-1-2(a)) arising out**  
 23           **of an episode of criminal conduct**, in accordance with  
 24           IC 35-50-1-2;

25           (2) an additional fixed term to an habitual offender under section  
 26           8 of this chapter; or

27           (3) an additional fixed term to a repeat sexual offender under  
 28           section 14 of this chapter;

29          a court is required to use the appropriate advisory sentence in imposing  
 30          a consecutive sentence or an additional fixed term. However, the court  
 31          is not required to use the advisory sentence in imposing the sentence  
 32          for the underlying offense.

33          **(d) This section does not require a court to use an advisory**  
 34          **sentence in imposing consecutive sentences for felony convictions**  
 35          **that do not arise out of an episode of criminal conduct.**

36          SECTION 5. [EFFECTIVE JULY 1, 2007] **IC 35-42-2-6, as**  
 37          **amended by this act, applies only to acts committed after June 30,**  
 38          **2007.**

39          SECTION 6. **An emergency is declared for this act.**

(Reference is to ESB 45 as reprinted April 10, 2007.)

**Conference Committee Report**  
**on**  
**Engrossed Senate Bill 45**

**S**igned by:

---

Senator Bray  
Chairperson

---

Representative Lawson L

---

Senator Arnold

---

Representative Foley

**Senate Conferees**

**House Conferees**